UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

April 1, 2008

NMFS Tracking No:
2008/00139

RECEIVED
APR 0 8 2008
LOCAL PROGRAMS

Trevin Taylor
WSDOT – Highways and Local Programs
Post Office Box 47331
Olympia, Washington 98504

Re: Endangered Species Act Section 7 Informal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation: NE Novelty Hill Road Project (Middle Sammamish River 6th Field HUC 171100120401)

Dear Mr. Taylor:

This correspondence is in response to your request for consultation under the Endangered Species Act (ESA) and the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

Endangered Species Act

The National Marine Fisheries Service (NMFS) has reviewed the Biological Assessment (BA) and Essential Fish Habitat (EFH) assessment received from the Washington State Department of Transportation (WSDOT), the non-Federal representative for the Federal Highway Administration (FHWA), on January 16, 2008. NMFS also received additional information on March 11, 2008. Federal action by the FHWA is the funding of the project, in whole or part. NMFS has also reviewed your request for concurrence with the effect determination of "may affect, not likely to adversely affect" for Puget Sound (PS) Chinook salmon (*Oncorhynchnus tshawytscha*) and PS Steelhead (*Oncorhynchnus mykiss*). Puget Sound Chinook were listed as threatened under the ESA on March 24, 1999 (50 CFR 223 and 224). Critical Habitat is not designated for PS Chinook within the action area. The PS Steelhead listing as threatened under the ESA became final on June 11, 2007 (72 FR 26722).

According to the BA, the WSDOT proposes to improve a project corridor located in unincorporated King County and is comprised of three roads: Northeast (NE) Novelty Hill Road, 196 Avenue NE, and NE Union Hill Road. The project improvements include:

- Construction of two lane, four lane, and five lane segments of the roadway.
- One new segment of roadway (i.e., 800 linear feet).

- Three improved intersections (i.e., roundabouts).
- Several wetland and stream mitigation improvements.
- Installation of new or upgrading culverts within the project area.
- Three stormwater treatment facilities.
- New bridge at NE Union Hill Road crossing Evans Creek.
- New pedestrian and bicycle facilities.

The WSDOT will clear and grub approximately 18.20 acres. This includes 11.20 acres for roadway widening and seven acres for stormwater treatment and detention facilities within the project area. Construction impacts will result in a permanent fill of 1.40 acres of wetlands. Earthwork will require approximately 101,000 cubic yards of cut and 130,000 cubic yards of fill. Construction will be occurring in two phases starting in 2010-2011 and 2016-2017, respectively.

The WSDOT and FHWA will be treating stormwater from 11.30 acres of new pollution generating impervious surface (PGIS) and retrofitting approximately 22.60 acres of existing PGIS within the project area. The primary treatment consists of infiltration and detention ponds and ecology embankments located in the project right-of-way. In addition, the WSDOT will incorporate LID (Low Impact Development) techniques to treat stormwater from 26 percent of the new roadway. These techniques include, but are not limited to, permeable/porous pavement surfaces and establishing bioretention areas.

The overall project consists of three Threshold Discharge Areas (TDAs). Stormwater from TDA 1 will be 100 percent infiltrated. Stormwater from TDA 2 will be discharging into a 50-acre wetland complex (i.e., additional treatment) before entering an unnamed tributary of Bear Creek (i.e., non-fish bearing). Stormwater from TDA 3 will be discharging into a wetland that is 300 to 500 feet north of Evans Creek (i.e., fish bearing creek). In addition, WSDOT modeled the distance when treated stormwater from WSDOT outfalls in TDA 3 will be at or below the NMFS' biological effects thresholds of dissolved copper concentrations of 2.0 µg/L over background levels of 3.0 µg/L or less, and dissolved zinc concentrations of 5.6 µg/L over background levels between 3.0 µg/L and 13.0 µg/L.

The WSDOT is proposing to replace the existing 24-foot wide by 20-foot long bridge with an approximate 82 foot wide by 65 foot span bridge over Evans Creek. Bridge removal activities include: (1) employing a debris containment system, (2) isolating concrete abutments from the creek, (3) excavating the area around the abutments, (4) filling excavated areas on the dry side with streambed gravel, (5) breaking off abutments, and (6) restoring the excavated portion of the stream channel. The new bridge will be supported by a drilled shaft foundation (i.e., oscillated-driven) approximately 15 feet outside of the ordinary high water mark (OHWM).

The WSDOT will extend four, remove one, and install seven new culverts to make them fish passable. The in-water work procedures are referenced on pages *2-41* and *2-42* of the BA and will occur during the work window of June 15 to September 15 for all waterbodies in the action area.

The WSDOT will be incorporating compensatory mitigation for wetland and stream impacts at four sites: (1) Stensland Creek, (2) Bear-Evans Valley South, (3) Evans Creek Bridge Crossing, and (4) Union Hill Terrace.

- The Stensland Creek mitigation portion includes work in the upper, middle, and lower reaches of Stensland Creek. Work in the upper reach includes removing two fish-passage barriers and placing Large Woody Debris (LWD) in the stream channel. Work in the middle reach includes constructing concrete box culverts, relocating approximately 160 linear feet of stream channel from the road into a 180 linear foot of new structurally complex stream channel and enhancing 0.8 acre of stream buffer and 2.2 acres of wetland buffer. Work in the lower reach includes enhancing and creating riverine wetlands, enhancing 3.3 acres of wetland buffer, and controlling invasive species. In addition, the WSDOT will restore 1,450 linear feet of Stensland Creek beneath NE 95th Street and replace two private driveway culverts.

- The Bear-Evans Valley South mitigation portion includes reestablishing 0.3 acre of stream buffer and relocating an existing unnamed tributary from a roadside ditch (i.e., 500 linear feet) into a new concrete box culvert which flows into a new complex channel.

- The Evans Creek Bridge Crossing mitigation portion includes placing LWD and removing reed canary grass in approximately 150 linear feet of stream channel and riparian areas. The Union Hill Terrace mitigation portion includes creating 0.17 and enhancing 0.10 acre of wetlands, and enhancing approximately 0.33 acre of a wetland buffer.

The action area for aquatic species extends approximately 50 feet upstream and 100 feet downstream of the in-water work of all waterbodies in the action area. The action area also includes the adjacent riparian zones, potential project mitigation sites, and construction staging areas.

Species Determination

Puget Sound Chinook Salmon

The NMFS analyzed the potential in-water construction impacts of the project on PS Chinook and determined that the impacts will be discountable because PS Chinook are least likely to be in the action area during the in-water work window of June 15 to September 15 for Evans Creek because they will have already outmigrated to the sea and low flow and subsequent high temperatures of the stream would likely preclude presence of juvenile Chinook in the vicinity of the work.

If PS Chinook occur in the project area, NMFS expects effects to be insignificant because the mobilization of sediment and or accidental release of pollutants will be minimized by implementing a detailed Temporary Erosion and Sediment Control Plan (TESC) and Spill Prevention Countermeasure and Control Plan (SPCC).

Furthermore, effects on water quality from stormwater will be minimized by: (1) incorporating infiltration and LID techniques, (2) retrofitting an additional 22.60 acres of PGIS, and (3) dissolved copper concentrations at NMFS' current biological effects thresholds will only extend to a distance of approximately seven feet from outfalls. The outfalls discharge directly into adjacent wetlands and are 493 feet from Evans Creek. Dissolved zinc concentrations at NMFS' current biological effects thresholds will only extend to a distance of approximately twenty-five feet from outfalls. The outfalls discharge directly into adjacent wetlands and are 475 feet from Evans Creek.

Because all potential adverse effects to PS Chinook are discountable or insignificant, NMFS concurs with the WSDOT effect determination of "may affect, not likely to adversely affect" for PS Chinook.

Puget Sound Steelhead

The NMFS analyzed the potential impacts of the project on PS Steelhead and determined that the in-water construction impacts will be discountable because elevated water temperatures and low flows will preclude the presence of PS steelhead in Evans Creek.

The effects to PS Steelhead will be insignificant because the mobilization of sediment or accidental release of pollutants will be minimized by implementing detailed TESC and SPCC plans.

Furthermore, effects on water quality from stormwater will be minimized by: (1) incorporating infiltration and LID techniques, (2) retrofitting an additional 22.60 acres of PGIS, and (3) dissolved copper concentrations at NMFS' current biological effects thresholds will only extend to a distance of approximately seven feet from outfalls. The outfalls discharge directly into adjacent wetlands and are 493 feet from Evans Creek. Dissolved zinc concentrations at NMFS' current biological effects thresholds will only extend to a distance of approximately twenty-five feet from outfalls. The outfalls discharge directly into adjacent wetlands and are 475 feet from Evans Creek.

Because all potential adverse effects to PS Steelhead are discountable or insignificant, NMFS concurs with the WSDOT effects determination of "may affect, not likely to adversely affect" for PS Steelhead.

This concludes informal consultation on this action in accordance with 50 CFR 402.13 and 402.14(b)(1). The FHWA must re-analyze this ESA consultation: (1) if new information reveals effects of the action that may affect listed species in a way not previously considered; (2) if the action is modified in a manner that causes an effect to

Magnuson-Stevens Fishery Conservation and Management Act

Federal agencies are required, under section 305(b)(2) of the MSA and its implementing regulations (50 CFR 600 Subpart K), to consult with NMFS regarding actions that are authorized, funded, or undertaken by that agency that may adversely affect Essential Fish Habitat (EFH). The MSA section 3 defines EFH as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." If an action would adversely affect EFH, NMFS is required to provide the Federal action agency with EFH conservation recommendations (MSA section 305(b)(4)(A)). This consultation is based, in part, on information provided by the Federal action agency and descriptions of EFH for Pacific salmon contained in Appendix A to Amendment 14 to the Pacific Coast Salmon Plan (August 1999) developed by the Pacific Fishery Management Council and approved by the Secretary of Commerce (September 27, 2000).

The project areas include habitat which has been designated as EFH for various life stages for Chinook, coho (*O. kisutch*), and pink salmon (*O.gorbuschca*).

Essential Fish Habitat Conservation Recommendations: Because the conservation measures that the FHWA included as part of the proposed actions to address ESA concerns are also adequate to avoid, minimize, or otherwise offset potential adverse effects to the EFH of Chinook, coho, and pink, conservation recommendations pursuant to (MSA section 305(b)(4)(A)) are not necessary. Since NMFS is not providing conservation recommendations at this time, no 30-day response from the FHWA is required (MSA section 305(b)(4)(B)).

This concludes consultation under the MSA. If the proposed action is modified in a manner that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS EFH conservation recommendations, the FHWA will need to reinitiate consultation in accordance with the implementing regulations for EFH at 50 CFR 600.920(l).

NMFS appreciates your efforts to comply with requirements under the ESA and the MSA. If you have questions, please contact Sean Callahan (Sean.Callahan@noaa.gov) at the Washington State Habitat Office, (206) 716-1145.

Sincerely,

D. Robert Lohn
Regional Administrator

cc: Ed Conyers Northwest Region Local Programs
Paul Wagner, WSDOT HQ Biology